U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 2 0 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a senior technical analyst. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel and copies of previously submitted materials.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989). Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on September 26, 2011. In an accompanying statement, counsel stated: "[The petitioner] has asked me to assist him [*sic*] in filing a petition . . . to enable him continue [*sic*] his biomedical research and develop a strong research program in the United States." The petitioner is neither male nor a biomedical researcher, yet counsel, throughout the five-page statement, repeatedly used masculine pronouns and words such as "science" and "research." Counsel appears to have used a largely unmodified template document, a conclusion consistent with repeated appearances of the phrase "Dr. Beneficiary" in place of the petitioner's actual name. (The petitioner does not claim to hold a doctorate.) As a result, the introductory statement contains no useful information relating specifically to the petitioner or to her claimed eligibility for the national interest waiver.

The petitioner identified no current or prospective employer on the petition form or on the accompanying Form ETA-750B, Statement of Qualifications of Alien. A résumé submitted with the petition indicated that the petitioner held two positions at the time of filing:

OX BACK OFFICE SOLUTIONS LAKELAND, FL
Business Analyst January 2011 – Present

- Elicit project requirements from stake-holders and business owners for the development of proprietary (SaaS) web applications
- Facilitate joint application & rapid application development (JAD/RAD) workshops & meetings
- Create support, training and help documentations
- Design test plan and test cases for User Acceptance Testing
- Develop business and functional requirements (BRD/FRD) for the application.
- Design interactive UI prototype using MS expression blend to demonstrate the application interaction to developers and stake-holders
- Produce high quality UI elements and ensure aesthetic quality of interfaces
- Validate technical designs created by IT developers against functional specifications to ensure there are no gaps between the application and the requirements

EFUSION LLC CHICAGO, IL
Founder/President September 2010 – Present

- Develop and execute business strategies to enable clients [to] unlock their full potential by leveraging web technology.
- Educate small businesses and individuals on the benefits of creating and maintaining a web presence.
- Responsible for all stages of Web site creations for clientele, from initial design and architecture to development, deployment, and management of web sites.

The same résumé indicated that the petitioner resides in West Chester, Ohio, about 300 miles southeast of Chicago and over 900 miles north of Lakeland.

The petitioner submitted copies of her educational credentials and background documentation about the importance of the sciences, but no evidence or explanation as to how the petitioner purported to qualify for the national interest waiver.

On December 28, 2011, the petitioner submitted a supplement to the initial filing, intended to demonstrate her eligibility for the waiver. Counsel's cover letter accurately described the accompanying exhibits, but again referred to the petitioner's occupation as "biomedical research." The petitioner stated:

> I have collaborated with and contributed significantly to the success of some of the finest (fortune 500) corporations in the United States, including Hewitt Associates, Continental Airlines, Teradata, and Aon. My unique background in the fields of business and technology has enabled me [to] cultivate skills sought after by US firms.
>
> I continue to work with AonHewitt on Information Technology advancements that will be more efficient and bring significant cost saving processes to our clients across the nation. The knowledge and skills gained from working on these projects can be applied

to different sectors of the economy. Corporations in the US can definitely benefit from the skills I have to offer. . . .

My most recent accomplishment is with OxBack Office solutions, an innovative start up venture with a goal to bring change to the transportation industry. I was brought onboard in early 2011 to define and design the specs for an online transportation management system . . . that enabled transportation companies [to] manage driver and vendor records. . . . I proposed an effective approach to develop an all encompassing TM system within the original budget and deadline. The scope was broadened and I proceeded to design a system that integrated DOT and CSA compliance, vendor management, driver management, electronic driver logs and on-board monitoring. This system is positioned to fill a hole in the transportation industry, thus satisfying a need of US firms.

The work I have done at Hewitt has significantly contributed to the quality of employee health benefits designed for our clients. . . . While the goal of lowering costs without cutting down on quality may seem impossible my team and I were able to achieve these goals by leveraging my technical, data mining and analysis skills. . . . In our case data mining helped in the recognition of loopholes in the existing health plans that cost employers millions of dollars and also provided the information needed to design and develop new efficient and cost effective health plans.

In 2010, I established a small business, eFusion LLC focused on the development of affordable cutting edge technology solutions that enhance performance, drive up profits and growth for its clients. . . .

In addition to continuing my work on improving health benefits administration by maintaining my employment with AonHewitt, I intend [to] vigorously pursue the development of cutting edge applications.

> Currently I am working on the development of a cloud based application to support the execution of HCAHPS (Hospital Consumer Assessment of Healthcare Providers and Systems) initiatives. . . . This system is being designed to enable health providers' measure [*sic*], monitor and improve their key performance indicators (KPI's). . . . Based on initial research conducted, it has been established that this system would guarantee our clients a 23.6% improvement in their KPI's in the first quarter post implementation, hence improving healthcare in the United States.

The petitioner's previously submitted résumé did not mention current employment with Aon Hewitt; it indicated that the petitioner worked for Hewitt Associates (later renamed Aon Hewitt, sometimes written as "AonHewitt" with no space) as a technical analyst from January 2009 to January 2011. USCIS records indicate that, at the time she filed the petition on September 26, 2011, the petitioner held H-1B nonimmigrant status permitting her to work for Ox Back Office Solutions and nowhere else. The approval of an earlier petition permitted her to work for Hewitt Associates, but USCIS revoked that approval in February 2011 after the petitioner changed employers. Hewitt Associates then filed a new Form I-129 nonimmigrant petition on the

beneficiary's behalf on September 28, 2011 (at roughly the same time that the petitioner filed her Form I-140 petition). The approval of that petition permitted the petitioner to work for Hewitt beginning April 19, 2012, but statements in the record appear to indicate that the petitioner resumed her work at Hewitt before that date.

Any work that the petitioner performed at Aon Hewitt after the petition's filing date cannot retroactively establish eligibility for the benefit sought. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request. 8 C.F.R. § 103.2(b)(1). USCIS cannot properly approve the petition at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

The petitioner submitted three witness letters. [redacted] systems analyst at Aon Hewitt, praised the petitioner's "unique background and her ability to complete projects efficiently," and stated that the petitioner "was very involved" in adapting the company's systems to comply with the Children's Health Insurance Program Reauthorization Act. [redacted] stated that the petitioner's "other significant achievements include the design and development of health plans for Annual Enrollment, database management and web portal management among others. Her work is innovative and cutting edge and her accomplishments as a Systems Analyst far exceeds [*sic*] those of her peers at the same career stage."

[redacted], now a systems administrator at Bunch & Associates, Inc., was previously the director of applications at Ox Back Office Solutions, and worked with the petitioner in that capacity. As an example of "[a]n outstanding accomplishment," [redacted] cited the petitioner's "development of high-quality user interface elements that ensured top notch aesthetic quality across applications."

Professor [redacted] of Lane College hired the petitioner's company eFusion "to establish a web presence, which would create awareness about [redacted] books and works of art." [redacted] stated: "[The petitioner] created an excellent design that exceeded my expectations . . . and she still continues to provide ongoing support for the project."

The letters quoted above do not distinguish the petitioner from her peers to an extent that would justify approving the national interest waiver. Client satisfaction is an important goal, but it does not warrant special immigration benefits. Improving and optimizing systems for employers and clients appear to be basic duties of computer analysts, rather than inherently influential achievements.

The third and final section of the petitioner's supplemental submission bears the heading "Other Documents/Publications that Establish Beneficiary's Eligibility for the National Interest Waiver." The materials within this section are general background materials from the Association for Computing Machinery and the Bureau of Labor Statistics. These items do not mention the petitioner at all. Therefore, at best they provide general information about the petitioner's occupation.

The director issued a request for evidence on February 1, 2012, instructing the petitioner to "submit documentary evidence" to meet the guidelines set forth in *NYSDOT*. In response, the petitioner submitted copies of previously submitted materials and new information about her employment.

The petitioner stated that the benefit from her work is national in scope because "AonHewitt is the leading provider of benefit administration services in the United States . . . , handling the administration of health care for more than 9 million employees and retirees." The petitioner contended that, owing to her employer's reach, her "work is used nationally."

In terms of what differentiates her from her peers, the petitioner stated that her "mix of IT [information technology] and Business backgrounds is rare in the IT industry." The petitioner listed aspects of various projects she undertook at Aon Hewitt, and stated: "Working to improve healthcare in the United States is the core of what I do now and project to do going forward." The petitioner states that her work at Aon Hewitt (both before she left that company and after she returned) and at eFusion have led to reduced costs, better regulatory compliance and other benefits to health care consumers, employers and the United States as a whole.

The petitioner submitted background information about rising health care costs, but no documentary evidence showing that her personal efforts have held down costs that otherwise would have increased. The materials submitted offer no objective means to compare the petitioner's work with that of other professionals in her specialty.

Two further recommendation letters accompanied the petitioner's response to the request for evidence. Aon Hewitt systems analyst [redacted] stated:

> [The petitioner's] past work has provided great benefits to employers and employees. While her work is part of a larger corporation, she has played an enormous role in ensuring that the solutions delivered to the clients are top class. . . . [T]he national scope and benefit of her work is evident in the number of client's employees who rely on our benefit management system for their health benefits needs. . . .
>
> A good portion of employee benefits costs is a direct result of poor administration. For the past couple of months she has been working on a project . . . aimed at eliminating costly errors in automatic premium processing, when implemented the solution will guarantee that the employer no longer accrues unwanted expenses in the form [of] under billing and the employee can rest assured that they [will] not get overbilled for health benefits.

[redacted], now an employee retirement specialist at Skadden, Arpt, Slate, Meagher & Flom LLP, "became acquainted with [the petitioner] while working as a Calc Engine Specialist at AonHewitt." [redacted]

> [The petitioner's] work at AonHewitt is highly recognized. She has worked tirelessly on many client teams and projects. . . . . Her work on the Annual enrollment projects have been especially recognized because she delivers top notch solutions to her clients.

> She played a major role on the retirement benefits project for KeyCorp. The client was seeking a cost efficient way to make available health benefits for retired employees and their family members who were ineligible for Medicare. . . . Her solution wasn't just cost effective but it provided easy access to these benefits for the end users. Considering the age of our end users, she recognized that the web platform alone may not be the most efficient way to deliver these benefits and she aided the development of a multi-channel delivery method. . . . The client and their retiree population were nothing but pleased at the delivery of the solution.

Without documentary evidence to clarify the petitioner's contributions and frame them in the context of the work of her peers, the selective anecdotes in the witness letters have little value as a gauge of the petitioner's contributions to her field.

The director denied the petition on July 3, 2012. The director found that the petitioner had established the substantial intrinsic merit of her occupation, but that "the record fails to show that the beneficiary's work at her employer rises to the level of national in scope." The director also found that the petitioner had not documented a pattern of impact or influence in her field that would warrant approval of the national interest waiver.

On appeal from the director's decision, counsel contends that the director's "decision did not give proper weight to compelling evidence" in the record, and that the director "applied an incorrect legal standard." Apart from these general claims, counsel pursues only one avenue in any detail. Specifically, counsel quotes from several previously submitted witness letters, and asserts that these materials ought to be sufficient to establish eligibility for the waiver.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The submitted letters are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Counsel acknowledges that the witnesses have all worked with the petitioner in some capacity, but asserts that this fact should not automatically discredit the letters or reduce their weight. Nevertheless, such letters cannot serve as first-hand evidence of the petitioner's wider impact. The petitioner has claimed that her work with national-level clients has affected millions of health care consumers. The petitioner has offered several claims to that effect, but no documentary evidence. Furthermore, working with a national-level clientele can, by itself, address the "national scope" aspect of the *NYSDOT* guidelines, but further persuasive evidence is necessary to show that it is in the national interest to ensure that the petitioner, rather than a qualified United States worker, is the one working with that clientele.

Witnesses have asserted that the petitioner has made improvements in various systems relating to health plan implementation. The record, however, lacks persuasive, objective evidence to show that the petitioner's accomplishments in that area substantially exceed what an employer would expect of any qualified employee performing those tasks. Fulfilling one's job duties is not grounds for the national interest waiver. The petitioner claims especially significant achievements in her field, but the record offers minimal information about the nature and extent of those achievements. The record contains no documentary evidence to show, for instance, that the petitioner's efforts have substantially reduced health care costs or improved health care delivery for significant numbers of people in the United States, or that others have emulated the petitioner's work in an effort to benefit still greater numbers. If each project is client-specific and proprietary, then the potential for wider impact is necessarily less wide-ranging than solutions that are generally applicable, widely available, and easily adaptable to different circumstances. The petitioner has shown little except that her present and former employers have been satisfied with her work.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.